

EXHIBIT K

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Genesis Global Capital, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 23-10063 (SHL)

Jointly Administered

**DECLARATION OF A. DERAR ISLIM IN SUPPORT
OF DEBTORS' SECOND OMNIBUS OBJECTION
(SUBSTANTIVE) TO CLAIM NOS. 981, 982 AND 990
PURSUANT TO 11 U.S.C. § 502 AND FED. R. BANKR. P. 3007 (NO LIABILITY)**

I, A. Derar Islim, hereby declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am the Interim Chief Executive Officer for the Debtors. I am generally familiar with the day-to-day operations and affairs of the Debtors.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number (as applicable), are: Genesis Global Holdco, LLC (8219); Genesis Global Capital, LLC (8564); Genesis Asia Pacific PTE. LTD. (2164R). For the purpose of these Chapter 11 Cases, the service address for the Debtors is 250 Park Avenue South, 5th Floor, New York, NY 10003.

2. I submit this declaration (the “Declaration”) in support of the Objection² which is being filed simultaneously herewith.

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my experience, personal knowledge and information concerning the Debtors’ relationship with Three Arrows Capital Ltd (“3AC”), my experience as a member of the Debtors’ leadership team, my review of relevant communications and documents, and/or information supplied to me by members of the Debtors’ management, other personnel and professional advisors regarding that relationship. To the extent that the Debtors learn that any information provided herein is materially inaccurate, the Debtors will act promptly to notify the Court and other parties; however, I believe all information herein to be true to the best of my current knowledge, information and belief. I am authorized to submit this Declaration on behalf of the Debtors and, if called upon to testify, I could and would testify competently to the facts set forth herein.

A. GAP’s Lending Business

4. Genesis Asia Pacific Pte. Ltd. (“GAP”) is a Singapore corporation with its principal place of business in Singapore. Its affiliate Genesis Global Capital, LLC (“GGC” and together with GAP, “Genesis”), is incorporated in Delaware with its principal place of business in Jersey City, New Jersey. GAP’s and GGC’s parent, Genesis Global Holdco, LLC (“Holdco”), is incorporated in Delaware with its principal place of business in New York, New York. Holdco is a subsidiary of Digital Currency Group, Inc. (“DCG”), which is a Delaware corporation with its principal place of business in Stamford, Connecticut.

5. GAP’s business is, and has been since its founding, to enter into digital asset loans and loans secured by digital assets, and to borrow and loan digital assets with comparably favorable

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Objection.

rates of arbitrage. GAP is not an end user or repository of digital assets but an intermediary. Its business model is to lend digital assets or currency that it borrowed at a higher rate than the rate at which it borrowed those assets. Indeed, for this reason, the standard form of Master Loan Agreement (“MLA”) that GAP entered into with loan counterparties – including 3AC – expressly contemplated that when GAP took digital assets as collateral for a loan, it was authorized to use that collateral by rehypothecating it, pledging it, or otherwise disposing of it in the course of its business.

6. During the period in which the lending relationship with Three Arrows Capital Ltd. (“3AC”) existed, including between October 21, 2021 and January 19, 2023 (the “Relevant Time Period”), Genesis was a party to a high volume of loans, with approximately 1,065 unaffiliated counterparties with which it engaged in either lending or borrowing of digital assets, or both. Genesis originated approximately \$309,000,000 in loans per day, \$2,000,000,000 in loans per week, and \$8,000,000,000 in loans per month. These loans had an average notional value of approximately \$100,000,000,000 over the Relevant Time Period. As of January 19, 2023 (the “Petition Date”), Genesis had outstanding loans of approximately \$ 550,094,558 and outstanding borrowings of approximately \$3,601,570,691. Counterparties to these loans included, among other similar institutions, cryptocurrency hedge funds. During the Relevant Time Period, GAP entered into several agreements (including, but not limited to, forward contracts, repurchase agreements, swap agreements, securities contracts, and commodities contracts) under which it agreed to transact by either borrowing or lending and taking as collateral cryptocurrencies and other digital assets of total gross dollar value not less than \$1,000,000,000. Pursuant to these agreements, GAP either loaned and received as collateral, or was the borrower on positions in

cryptocurrencies and other digital assets, whose mark-to-market value exceeded \$100,000,000 during the Relevant Time Period.

B. The Lending Relationship Among 3AC, GAP And GGC

7. Beginning in 2019, GGC, GAP and 3AC entered into various agreements that set out the terms of their lending relationship.

8. Pursuant to its agreements with 3AC, GAP provided loans of USD and digital assets to 3AC. At the time of 3AC's default, 3AC had outstanding obligations to GAP in a notional amount of approximately \$2,363,105,165. In return for the extension of loans, 3AC transferred (in the form of pledges and/or delivery) USD, digital assets, or shares to GAP as collateral. Pursuant to these agreements, GAP was entitled to and did rehypothecate or reuse this collateral in the ordinary course of its lending activities, including to extend new loans or to pledge to another counterparty as collateral. The parties entered into hundreds of loans during the course of their relationship, and 3AC paid interest on outstanding loans on a monthly basis. 3AC was one of Genesis's largest borrowers from 2020 to 2022, up until the time of its collapse.

9. The only contractual relationship that Genesis and 3AC had was a lending relationship whereby 3AC would transfer collateral to Genesis in exchange for the extension of loans, as well as ancillary collateral management services, whose terms generally required periodic interest payments or margin payments in the event of a change in collateral value.

10. 3AC did not have any custodial, gifting or other type of relationship with Genesis.

11. HoldCo did not maintain any lending, contractual or other business relationship with 3AC.

C. 3AC Defaults And Genesis Exercises Remedies

12. Under the terms of the MLAs, 3AC was required to post additional collateral if the value of its posted collateral fell below certain agreed-upon thresholds. After 3AC failed to meet a margin call, Genesis issued 3AC a notice of default on June 13, 2022.

13. At the time of 3AC's default, 3AC owed GAP approximately \$2,363,105,165 (in USD and digital assets) under the MLAs and related agreements. As collateral for its outstanding loans, 3AC had transferred (in the form of pledges and/or delivery) to GAP the following assets: (1) 35,585,040 Grayscale Bitcoin Trust Shares ("GBTC"); (2) 33,348.03 Bitcoin ("BTC"); (3) 17,455.73 Ether ("ETH"); (4) 2,739,043.83 AVAX tokens; and (5) 13,583,265 NEAR tokens. As of June 23, 2022, the total value of the GBTC, BTC and ETH collateral was approximately \$1,164,807,844.92, and the total value of the AVAX and NEAR collateral was approximately \$93,105,701.40, in each case, based on the relevant spot price of the relevant asset at that time.

14. By late June 2022, Genesis had exercised remedies against the GBTC, BTC and ETH collateral, which exercise reduced GAP's claim against 3AC to approximately \$1,198,297,320.

15. As to the AVAX and NEAR collateral, Genesis lacks visibility and definitive information concerning the current status and disposition of such collateral.

D. The Underlying Transactions

16. 3AC and GAP regularly agreed for assets to serve as collateral in connection with new loans, in response to margin calls, or in connection with substitutions of collateral, often without executing the form of Loan Term Sheet attached as exhibits to the MLAs.

17. The main course of dealing between Genesis and 3AC for the lending relationship was via Telegram chat, and all of the relevant transactions are primarily memorialized therein.

18. 3AC transferred the Amended PoC Assets pursuant to the MLAs.

19. The Interest Payment was comprised of several payments from 3AC to GAP for interest accrued during the month of May 2022 on outstanding loans:

- a) On June 2, 2022, 3AC paid GAP approximately 478,767.12 Tether (“USDT”), 4,149.54 Ethereum Classic (“ETC”), and 4,881.44 FTX Token (“FTT”) as interest.
- b) On June 3, 2022, 3AC paid GAP \$15,358,034.15 and approximately 1,899,706.52 USDC as interest.
- c) The approximate USD value of the USDT, ETC, FTT, and USDC on the dates they were transferred to GAP, together with the \$15,358,034.15, is slightly less than \$18 million.³

20. 3AC paid interest on its outstanding loans on a monthly basis throughout the parties’ lending relationship.

21. The Principal Payment was a payment made from 3AC to GAP on May 6, 2022 for the purpose of repaying and settling several outstanding open term loans from GAP to 3AC in full or in part:

- a) The Principal Payment fully repaid and settled a loan for \$38,804,954.17 provided by GAP to 3AC on January 11, 2022;
- b) The Principal Payment fully repaid and settled a loan for \$200,000,000 (of which \$190,000,000 had previously been repaid) provided by GAP to 3AC on January 11, 2022; and

³ On June 2, 2022, the closing prices of USDT, ETC, and FTT were \$1.00, \$22.42, \$27.16, respectively, according to Crypto.com. The closing price of USDC on June 3, 2022 was \$1.00, according to Crypto.com. Multiplying these prices by the quantities of the different assets transferred to Genesis as interest, and adding those totals together, yields an approximate total of \$2,604,086.21. This, combined with the \$15,358,034.15 transferred as interest, totals approximately \$17,962,120.36.

- c) The Principal Payment partially repaid 66,195,045.83 USDC of a loan for 225,000,000 USDC provided by GAP to 3AC on January 28, 2022.

22. 3AC repaid loans provided by Genesis on a regular basis over the course of the parties' lending relationship, either of its own accord or to raise margin levels so Genesis would continue to extend new loans. The Principal Payment was an example of the latter.

23. The remaining assets at issue, specifically 33,348.03 BTC, 17,455.73 ETH and 13,172,000 GBTC, consist of Collateral that 3AC transferred to GAP in the course of the parties' lending relationship (and that GAP foreclosed upon following 3AC's default) as a result of the following three types of transfers:

- a) **Purchase price loans.** 23,256.97 BTC was Collateral (as defined under the MLAs) transferred from January 9, 2022 to June 7, 2022 in connection with purchase price loans of USD of equal or greater value (*i.e.*, loans of USD that Genesis made to 3AC for the purpose of allowing 3AC to buy such BTC). Similarly, 3,296,472 GBTC was Collateral (as defined under the MLAs) transferred from May 28 to May 29, 2020 in connection with loans of BTC and USDT. Accordingly, this 23,256.97 BTC and 3,296,472 GBTC were transferred in connection with a contemporaneous exchange of value for loans extended by GAP to 3AC:
 - i. Between January 9, 2022 and January 11, 2022, 3AC transferred 8,206.97 BTC to GAP as collateral in connection with three purchase price loans of USD of equal value extended by GAP to 3AC. Some of these transactions and transfers are memorialized in executed Loan Term Sheets.
 - ii. On May 14, 2022, 3AC transferred 3,000 BTC to GAP as collateral in connection with a purchase price loan of USD of equal value extended by

GAP to 3AC. This transaction and transfer is memorialized in an executed Loan Term Sheet.

- iii. On May 17, 2022, 3AC transferred 5,000 BTC to GAP as collateral in connection with a purchase price loan of USD of equal value extended by GAP to 3AC.
- iv. On May 30, 2022, 3AC transferred 3,450 BTC to GAP as collateral in connection with a purchase price loan of USD of equal value extended by GAP to 3AC.
- v. Between June 6, 2022 and June 7, 2022, 3AC transferred 3,600 BTC to GAP as collateral for purchase price loans of USD of equal value extended by GAP to 3AC.
- vi. On May 28, 2020, 3AC pledged 2,125,794 GBTC pursuant to a Pledge Agreement signed by the parties on May 28, 2020. This GBTC was pledged as collateral for a loan of 2,500 BTC on May 28, 2020.
- vii. On May 29, 2020, 1,170,678 GBTC was provided as Collateral for a loan of 10,000,000 USDT.

b) **Collateral substitutions.** 9,131.06 BTC, 17,455.73 ETH, and 6,391,199 GBTC were Collateral (as defined in the MLAs) transferred through collateral substitutions requested by 3AC⁴:

⁴ Based on my knowledge and experience, collateral substitutions such as these are common practice in the market for loans collateralized with digital currency assets.

- i. Between May 23, 2022 and June 7, 2022, at 3AC's request, 3AC transferred to GAP 9,131.06 BTC to substitute for other Collateral that 3AC had pledged and transferred to GAP.
 - ii. Similarly, on June 12, 2022, at 3AC's request, 3AC transferred to GAP 17,455.73 ETH to substitute for other Collateral that 3AC had transferred to GAP.
 - iii. The original collateral that was substituted through these transfers was comprised of: (1) 96,200,000 ALGO, 699,000 SOL, 300,000 AVAX and 50,000 ETH, all of which 3AC transferred to GAP as Additional Collateral in response to a May 9, 2022 margin call that GAP issued to 3AC; and (2) 71,375 ETH that 3AC transferred to GAP on December 6, 2021 as collateral for a purchase price loan of USD.
 - iv. Additionally, between September 25, 2020 to January 26, 2021, 3AC transferred to GAP 6,391,199 GBTC to substitute for other Collateral that 3AC had transferred to GAP.
- c) **Margin calls.** 960 BTC and 13,172,000 GBTC was transferred as Additional Collateral (as defined in the MLAs), *i.e.*, margin payments, pursuant to margin calls:
- i. On February 21, 2022 and February 23, 2022, 3AC transferred 610 BTC and 350 BTC, respectively, to GAP as Additional Collateral in response to a margin call that GAP issued 3AC on February 20, 2022.
 - ii. On May 11, 2022 and May 12, 2022, 3AC transferred 7,720,000 GBTC and 5,400,000 GBTC, respectively, to GAP as Additional Collateral in response to a margin call that GAP issued 3AC on May 9, 2022.

24. The AVAX and NEAR tokens also consist of collateral that 3AC pledged to GAP in the course of the parties' lending relationship. 3AC pledged 2,739,043.83 AVAX tokens and 13,583,265 NEAR tokens to GAP pursuant to a Pledge Agreement between the parties dated January 27, 2022. These tokens were pledged as collateral for a loan of 225,000,000 USDC from GAP to 3AC on January 28, 2022.

E. The Purpose of the Transactions

25. GAP's business purpose in entering the lending agreements with 3AC was, in part, to gain access to the cryptocurrencies and other digital assets which 3AC pledged as collateral (in order to, for example, re-lend those cryptocurrencies).

26. Following the provision of this collateral by 3AC, GAP used the various cryptocurrencies and digital assets it received from 3AC in order to address counterparty risk for the loans themselves, as well as to re-lend in new loans to other parties, before either returning the collateral when 3AC paid back the corresponding loan principal, or in the case of the subset of transactions on which 3AC defaulted, foreclosing on that collateral.

27. None of the loans from GAP to 3AC were repaid less than two days after origination.

F. Location of Key GAP and Other Genesis Employees

28. During GAP's lending relationship with 3AC, key individuals acting for Genesis were based in, and located in, New York City, New York. These included Matthew Ballensweig, Managing Director, Co-Head Trading & Lending and the primary manager of Genesis's lending relationship with 3AC, who was based in, and located in, New York City at all relevant times during the GAP-3AC lending relationship; Greg Guttas and Jake Kaufman, who were both Vice Presidents in spot and derivative cryptocurrency trading, who were based in, and located in, New York City when they negotiated the majority of the key agreements with 3AC; Kristopher Johnson, a Senior Risk Officer and the signatory to the MLAs, who was based in New York City as of the

date of execution of the MLAs; Adim Offurum, a Vice President in Credit Risk, who was based in, and located in, New York City when he issued certain various margin calls to 3AC pursuant to which certain of the Challenged Transfers were made; Arianna Pretto-Sakmann, Chief Legal Officer, who was based in, and located in, New York City when she issued a notice of default to 3AC on June 13, 2022, at 6:29 pm from New York City; and Andrew Sullivan, General Counsel, who was based in, and located in, New York City when he informed Jacob Hinkle, the managing Director of TradeStation Securities, Inc. ("TradeStation") based in Plantation, Florida, by email on June 16, 2022 at 12:48 pm, that 3AC was in default of its obligations under the MLAs, and instructed TradeStation (pursuant to an attached notice of control) to grant GAP control over 26,371,992 shares of GBTC which 3AC had posted as collateral under the MLAs, and which were held in accounts at TradeStation in the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 31, 2023
New York, New York

/s/ A. Derar Islim
A. Derar Islim
Interim Chief Executive Officer, Genesis